

Minutes

DVD No. 224

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, at 7:30 P.M., on Monday, November 2, 2009. Mayor Peggy Dunn presided.

Councilmembers present: Jim Rawlings, James Azeltine, Gary Bussing, Lou Rasmussen, Debra Filla, Julie Cain, Greg Peppes, and Mike Gill

Mayor/Councilmembers absent: None.

Staff present:

Scott Lambers, City Administrator
Chief John Meier, Police Department
Chief Ben Florance, Fire Department
Lovina Freeman, HR Director
Karl Weinfurter, Info. Systems Specialist

Patty Bennett, City Attorney
Joe Johnson, Public Works Director
Chris Claxton, P&R Director
Deb Harper, City Clerk
Pam Gregory, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn noted the following modification to the agenda:

- * Addition of Item No. 9C – Report from Councilmember Filla

A motion to approve the agenda was made by Councilmember Rawlings; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

3. CITIZEN COMMENTS

Members of the public are welcome to use this time to make comments about City matters that do not appear on the agenda, or about items that will be considered as part of the consent agenda. It is not appropriate to comment on pending litigation, municipal court matters or personnel issues. Comments about items that appear on the action agenda will be taken as each item is considered. **CITIZENS ARE REQUESTED TO KEEP THEIR COMMENTS UNDER 5 MINUTES.**

4. PROCLAMATIONS – None.

5. PRESENTATIONS/RECOGNITION – None.

6. SPECIAL BUSINESS – None.

7. CONSENT AGENDA

Consent agenda items have been studied by the Governing Body and determined to be routine enough to be acted on in a single motion. If a Councilmember requests a separate discussion on an item, it can be removed from the consent agenda for further consideration.

- A. Accept Appropriation Ordinance Nos. 2009-39, 2009-40, 2009-41, and 2009-42
- B. Accept minutes of the September 21, 2009 Governing Body Work Session
- C. Accept minutes of the October 5, 2009 Governing Body meeting
- D. Accept minutes of the October 5, 2009 Governing Body Work Session
- E. Accept minutes of the September 9, 2009 Historic Commission meeting
- F. Accept minutes of the August 25, 2009 Leawood Arts Council meeting
- G. Accept minutes of the August 11, 2009 Park & Recreation Advisory Board
- H. Accept minutes of the May 27, 2009 Stormwater Management Committee meeting
- I. Approve 2011 Budget and Capital Improvement Project [CIP] Calendar
- J. Approve Retail Liquor Store License for Cork & Bottle [f/k/a Stoll Liquor], located at 3731 W. 133rd Street
- K. Approve renewal of Cereal Malt Beverage [CMB] license for Hy-Vee Food Store, located at 12200 State Line Road
- L. Approve issuance of Temporary Alcohol Permit to conduct DeLaSalle 19th Annual Movie Benefit Event at AMC Town Center Theatre, 11701 Nall Avenue, on Thursday, November 12, 2009, in accordance with Code § 3-216
- M. Approve issuance of Temporary Alcohol Permit for Holiday Open House event at Annabelle's Fine Linens located within Park Place Development, on Thursday, November 19, 2009, in accordance with Code § 3-216
- N. Approve Change Order No. 1 in the reduced amount of \$46,590.14 to Miles Excavating, pertaining to the 2009 Arterial Mill & Overlay Project [Project # 72012]
- O. Approve 4th and Final Pay Request in the amount of \$5,000 to Miles Excavating, pertaining to the 2009 Arterial Mill & Overlay Project [Mission Road] [Project # 72012]
- P. 2nd and Final Pay Request in the amount of \$7,334.00 to Musselman & Hall, pertaining to 2009 Slurry Seal Project [Project # 70005]
- Q. **Resolution No. 3283** calling for a public hearing to be held on December 7, 2009, regarding amendments to the 2009 Fiscal Budget for the City of Leawood
- R. **Resolution No. 3284** approving and authorizing the Mayor to execute Supplemental Agreement No. 1 to that certain Inter-local Agreement dated July 20, 2009, between the City and the Kansas Department of Transportation [KDOT] [American Recovery and Reinvestment Act of 2009 [ARRA- Agreement No. 181-09] [46N-0449-01] for the grading and surfacing of 103rd Street between State Line Road and Mission Road
- S. **Resolution No. 3285** approving and authorizing the Mayor to execute an Engineering Service Agreement in the amount of \$55,000, between the City and Continental Consulting Engineers, Inc., pertaining to the stormwater project located at 97th and State Line Road [Project # 76022]

- T. **Resolution No. 3286** approving and authorizing the Mayor to execute a Letter of Engagement between the City and Rubin Brown, LLP, for an amount not to exceed \$32,000, pertaining to 2009 audit services
- U. **Resolution No. 3287** authorizing and approving the Mayor to accept a Letter of Engagement for an amount not to exceed \$75,000, from Orrick and Associates, pertaining to the condemnation of real property located at 117th and Roe Avenue
- V. Police Department Monthly Report – September, 2009
- W. Fire Department Monthly Report– September, 2009
- X. Municipal Court Monthly Report– September, 2009

Mayor Dunn noted that revised Item No. 7I had been placed upon the dais.

Councilmember Bussing requested to pull Item No. 7D and Councilmember Gill pulled Item No. 7G for discussion.

A motion to approve the remaining Consent Agenda items was made by Councilmember Bussing; seconded by Councilmember Gill. The motion carried following a unanimous vote of 8-0.

7D. Accept minutes of the October 5, 2009 Governing Body Work Session

Councilmember Bussing indicated one of the topics that had been addressed in this work session was the transition period for which the entities that had recycle bins would be required to comply. Mr. Lambers had originally expressed two to three years compliance and the Mayor had expressed concern that allowing three years was a little excessive. There was not a conclusion to this discussion in the minutes and he wanted to note for the record that it was the consensus of the Governing Body to bring them into compliance as soon as practical.

Mayor Dunn noted the last paragraph in the minutes stated a two-year maximum time frame to come into compliance of the ordinance.

A motion to approve Item No. 7D was made by Councilmember Bussing; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

7G. Accept minutes of the August 11, 2009 Park & Recreation Advisory Board

Councilmember Filla noted on Page 3 in the minutes they discussed trying to increase the number of rentals at the Community Center as an option when the lodge is booked. Mayor Dunn confirmed for Ms. Filla that the Oak Room at City Hall was referred to as the Community Center.

A motion to approve Item No. 7G was made by Councilmember Filla; seconded by Councilmember Gill. The motion carried following a unanimous vote of 8-0.

Mayor Dunn referred to Item Nos. 7N and 7O and congratulated Miles Excavating Company for receiving perfect scores in every category on the evaluation and for coming in under budget on the 2009 Arterial Mill and Overlay Project.

8. MAYOR'S REPORT

- A. Mayor Dunn hosted the Johnson & Wyandotte Counties Council of Mayors meeting at Leawood's Gezer Park in October, with discussion of the 2010 state legislative topics that will be addressed at their November meeting with all of the legislators from both counties.
- B. Participated in the 2009-2010 Johnson County Community College Foundation Strategic Planning Initiative Forum. This was facilitated by Ellen Gill, wife of Councilmember Mike Gill.
- C. Participated in the 2009 Leadership Summit, hosted by Johnson County Chairman Annabeth Surbaugh. This is the 4th consecutive summit, providing an opportunity for city and county leaders to engage in shared dialogue about important community issues.
- D. Attended one of the Leawood Stage Company's presentations of "She Loves Me," held on the evenings of October 9th and 10th, with a Sunday matinee on October 11th. Mayor Dunn noted it was a wonderful, fabulously talented event and congratulated Leawood Stage Company Chairman Paul Anderson and all others who worked so hard on this.
- E. Attended the Crescent Peace Society's Eid Celebration and Awards Dinner. The Crescent Peace Society was founded by Leawood residents with their mission - "To enhance the understanding of Muslim cultures through educational and cultural activities involving the exchange of ideas and experiences among people of diverse cultures."
- F. Attended the Johnson County Library's Grand Re-Opening and Ribbon Cutting Celebration with Councilman Azeltine for the expanded Leawood Pioneer Library.
- G. The Gezer Delegation, led by Mayor Peter Weiss, arrived for a several-day visit that included the dedication of Gezer Park and Ilan Aberbuch's dedication of Stones and Steps, one of the City's newest public art pieces. There were a few hundred people in attendance, along with the Deputy Consulate General of Israel to the Midwest, Gershon Kedar. Israel had celebrated their 60th Anniversary when Leawood celebrated theirs. Mayor Dunn thanked the Gezer Sister City Committee, Co-Chaired by Mike Gill and Julie Cain, for their work on the event and expressed her appreciation to City Administrator Scott Lambers for his work with the delegation. She also noted appreciation to Mr. Lambers and Parks and Recreation Director Chris Claxton for their work on the dedication as well.
- H. Attended a Ribbon Cutting Ceremony, in conjunction with the Overland Park Chamber of Commerce, for The Sweet Life at Grand Court in Overland Park. This is a great new addition for the community for aging seniors. Mayor Dunn wished them much success.
- I. Attended a Ribbon Cutting Ceremony, hosted by the Leawood Chamber of Commerce, for the CA Men's Fine Grooming in Park Place. Mayor Dunn wished them much success.

- J. Mayor Dunn was pleased to say that the City of Leawood's United Way Campaign Kick-Off Event was a success and they reached their goal in pledge amounts as well as adding new contributors to the campaign. She thanked City Administrator Scott Lambers and Human Resources Director Lovina Freeman for their leadership of the campaign, and everyone who donated for their generosity. The United Way of Greater Kansas City will put the money to very good use.

9. COUNCILMEMBERS' REPORT

- A. Councilmember Lou Rasmussen Report - revision to scope of Amphitheatre project for the next phase to only include parking lot expansion and one restroom facility

Councilmember Rasmussen updated the Governing Body on the progress of the Amphitheatre Project. The floodplain has expanded and taken up the area for the proposed parking lot. They had intended to install a culvert; however, with the expansion of the floodplain, the culvert became impractical. A bridge would be required in order to construct a road and would assume all of the available funds. He was proposing instead to expand the existing parking lot and change the radius of the curve in the existing road to accommodate trucks. The restroom should remain close to its original location.

Mayor Dunn confirmed with Parks and Recreation Director Chris Claxton that the restroom would have 10 stalls.

Public Works Director Joe Johnson stated they were currently working with Continental Engineering to have a design contract by the November 16, 2009, Governing Body meeting.

Councilmember Peppes confirmed with Councilmember Rasmussen that they were still within the \$500,000 budget.

- B. Councilmember Jim Rawlings Report - recommendation from Stormwater Committee and Green Initiative Task Force to review Leawood Development Ordinance [LDO] section regarding rain barrels

Councilmember Rawlings reported he had spoken with Mr. Lambers regarding rain barrel issues and had indicated he would research this and return to the committee's with a report. It was the intent to have the rain barrels located initially in back yards.

Mr. Lambers stated the rain barrels would be restricted to back yards and not be allowed to encroach into the side yard. Another requirement would be to acquire barrels that would limit mosquito breeding. Any water discharge would need to be consistent with the ordinances.

C. Councilmember Debra Filla Report

Councilmember Filla reported the cities of Overland Park, Mission Hills, Leawood, and Prairie Village were teaming up to sponsor another Electronics Recycling and Shredding Event, held on Saturday, November 14th from 8:00 A.M. to 2:00 P.M., located in the parking lot of The Church of the Resurrection.

10. STAFF REPORT – None.

11. OLD BUSINESS – None.

12. OTHER BUSINESS – None.

13. NEW BUSINESS

A. **Ordinance No. 2418C**, amending Sections 11-101 through 11-106 of the Code of the City of Leawood, 2000, pertaining to regulating public offenses within the corporate limits of the City of Leawood, Kansas; incorporating by reference the ‘Uniform Public Offense Code for Kansas Cities,’ 2009 edition, [UPOC] with certain amendments and omissions, such incorporation being authorized by K.S.A. §12-3009 through 12-3012, and K.S.A. § 12-3301 and 12-3302, and repealing existing § 11-101 through 11-105, and other sections in conflict herewith [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Rasmussen; seconded by Councilmember Azeltine.

Councilmember Bussing was concerned with the provision related to the unlawful operation of a golf cart. He was concerned they would begin appearing on the streets of Leawood because they were currently being manufactured nearby.

City Attorney Patty Bennett indicated there were several provisions the Kansas Legislature has established over the years. Golf carts are very well defined; however, she wasn’t clear if the vehicle Mr. Bussing was referring to would fall under this definition.

Mr. Bussing thought these carts had been modified to meet street regulations of the state. He wanted additional definition information.

Councilmember Gill confirmed with Ms. Bennett they were only changing the Code for clarity under section 11-103, Criminal Use of Weapons. Mr. Gill thought the wording under section (c)7 was unclear. Ms. Bennett thought they could change the language for clarity as long as it still met the state statute. His intent of supporting this was to restrict the meaning of this sentence to paragraph 7.

Mr. Gill confirmed with Mr. Lambers that the intent of Section 14-106, Unlawful Operation of a Golf Cart, was to allow the carts to cross a street that has a higher speed limit and not be in violation.

Ms. Bennett indicated the statute states they do not allow driving them on a street or highway with a posted speed limit of greater than 30mph, unless crossing the street. He was also concerned with the language under section 14-106, letters (b) and (c) and reiterated that the state statute language was unclear and poorly worded. Ms. Bennett suggested they could also change this language; however, they would still be required to meet the state statute.

The motion to pass the ordinance carried following a vote of 7-1. Yea: Councilmembers Rasmussen, Azeltine, Bussing, Rawlings, Cain, Peppes, and Filla. Nay: Councilmember Gill.

- B. **Ordinance No. 2419C**, amending Article 1 of Chapter 14 of the Code of the city of Leawood, Kansas, 2000, by amending Sections 14-101 through 14-112 and adding a new Section 14-113, pertaining to regulating traffic within the corporate limits of the City of Leawood, Kansas; incorporating by reference the 'Standard Traffic Ordinance for Kansas Cities, 2009 edition,' [STO] with certain amendments, such incorporation being authorized by K.S.A. § 12-3009 through 12-3012, and K.S.A. § 12-3301 and 12-3302; repealing existing sections 14-101 through 14-112; and other sections in conflict herewith [Roll Call Vote]

A motion to pass the ordinance was made by Councilmember Rasmussen; seconded by Councilmember Filla.

Councilmember Filla originally wanted her motion to include revisions with the golf cart discussion made by Councilmember Gill.

Councilmember Filla removed her second on the motion.

Councilmember Azeltine seconded the motion.

Mayor Dunn clarified that the motion from Councilmember Rasmussen and second from Councilmember Azeltine was to pass the ordinance as presented.

The motion to pass the ordinance carried following a vote of 6-2. Yea: Councilmembers Rasmussen, Azeltine, Rawlings, Bussing, Cain, and Peppes. Nay: Councilmembers Filla and Gill.

- C. Schedule a Governing Body Executive Session on Monday, November 2, 2009, immediately following the regular meeting to discuss matters related to attorney-client privilege

A motion to approve the Executive Session was made by Councilmember Rawlings; seconded by Councilmember Gill. The motion carried following a unanimous vote of 8-0.

A motion to recess into Executive Session at 8:30 P.M. for a period of 20 minutes was made by Councilmember Rawlings; seconded by Councilmember Filla. The motion carried following a unanimous vote of 8-0.

The Governing Body reconvened into regular session at 8:50 P.M.

A motion to extend the Executive Session at 8:50 P.M. for a period of 20 minutes was made by Councilmember Gill; seconded by Councilmember Rawlings.

The Governing Body reconvened into regular session at 9:10 P.M.

A motion to adjourn the regular session was made by Councilmember Azeltine; seconded by Councilmember Filla.

There being no further business, the meeting was adjourned at 9:10 P.M.

ADJOURN

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Deputy City Clerk